

Before the **DOCKET FILE COPY ORIGINAL**
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition for Rulemaking to Amend)
Parts 21 and 74 of the Commission's)
Rules to Enhance the Ability of) File No. RM-9060
Multipoint Distribution Service and)
Instructional Television Fixed Service)
Licensees to Engage in Fixed)
Two-Way Transmissions)

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Federal Communications Commission
Office of Secretary

REPLY COMMENTS OF WEBCEL COMMUNICATIONS, INC.

WebCel Communications, Inc. ("WebCel"), by its undersigned counsel, submits these Reply Comments opposing the Petition for Rulemaking ("Petition"), filed March 14, 1997, by firms in the wireless cable industry seeking to allow Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to engage in fixed two-way services.¹

DISCUSSION

I. PETITIONERS' COMPARISONS BETWEEN MDS AND LMDS MAKE CLEAR THAT MDS AND ITFS LICENSEES MUST PAY FOR THE FLEXIBILITY THEY SEEK

In their initial Comments, Petitioners ask for additional flexibility which reaches beyond the already broad request contained in the original Petition, analogizing wireless cable with

¹ Public Notice, "Pleading Cycle Established for Comments on Petition for Rulemaking to Amend Parts 21 and 74 of the Commission's Rules to Enhance the Ability of Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions," DA 97-637, RM-9060 (Mar. 31, 1997) ("Public Notice").

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LMDS, and citing to the *LMDS Second Report and Order*, which discusses how LMDS licensees will benefit from flexibility because it will allow them the ability to offer a broad range of services.² Petitioners' efforts to bootstrap their request to the LMDS service rules, only serves to highlight that the wireless cable industry should be required to pay for the flexibility they seek.

The *LMDS Second Report and Order* established competitive bidding procedures whereby LMDS operators will pay for their licenses at auction,³ and hence the critical service dimension of flexibility which the MDS industry covets will be valued by the marketplace. In contrast, MDS operators want this flexibility for free, by consequence conferring a windfall on existing licensees. Thus, despite their assertions, the Petitioners do not seek regulatory parity. They are hoping that the Commission will create a regulatory scheme which will allow MDS to offer the same wide array of services as will be offered by LMDS (and permit MDS to compete with LMDS) but which would not include the LMDS licensees' obligation to pay for this flexibility through competitive bidding. As argued by WebCel in its *Opposition*, it is untenable for the Commission to grant retroactive spectrum flexibility to some licensees while requiring their competitors to pay for this significant right at auction.

² *Comments of the Petitioners* at 4. See Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, *Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, FCC 97-82 ¶ 225 (rel. Mar. 13, 1997) ("*LMDS Second Report and Order*").

³ *LMDS Second Report and Order* ¶ 302-363.

II. THE PETITIONERS PROPOSE A COMPLETE REVISION OF THE MDS/ITFS RULES WHICH WOULD EVISCERATE THE PUBLIC INTEREST RATIONALE FOR ITFS SERVICE

The Petitioners also argue that they are not proposing any substantial change in MDS because the Commission has always permitted MDS channels to be used for "any kind of communications service."⁴ To the contrary, the proposed rules would completely restructure MDS/ITFS service, and would totally eliminate any public interest rationale that justifies the free allocation of spectrum to educational interests. A sampling of the views held by other commenters in this proceeding reveals a fear that the industry proposal would fundamentally change the character of ITFS service, turning it into nothing more than a cash cow rather than a source of instructional programming.⁵ These Commenters, who stand to see an increase in the value of their licenses under the proposed rules, advise caution because they are aware that the Petition may be a serious threat to the educational goals of ITFS. As stated by the Archdiocese of Los Angeles, "[e]ach step towards the commercialization of ITFS spectrum threatens to compromise its unique educational character."⁶ As such, the industry proposal represents little more than an increased subsidy to ITFS licensees, at the expense of the Nation's taxpayers and firms like WebCel who will have to pay for the valuable rights that the industry now seeks for free.

⁴ *Comments of the Petitioners* at 3 (citing 47 C.F.R. § 21.903(b)).

⁵ For example, Northeastern University states that the Petition will lead to a "comprehensive restructuring" of MDS and ITFS. *Comments of Northeastern University* at 2; PACE Telecommunications Consortium states that the Petition would "radically alter the ITFS and MDS landscape." *Comments of PACE Telecommunications Consortium* at 4; the Archdiocese of Los Angeles Education and Welfare Corporation urges caution and states that the "extremely complex proposal" would make "wholesale changes to the rules governing ITFS." *Comments of the Archdiocese of Los Angeles Education and Welfare Corporation* at 2; Caritas Telecommunications, Inc. refers to the proposed rule changes as "extremely complex" and urges caution. *Comments of Caritas Telecommunications, Inc.* at 2.

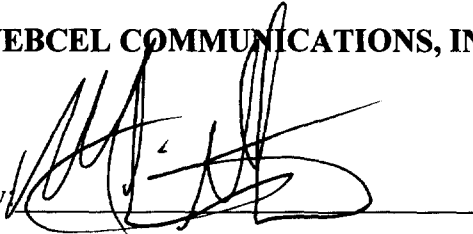
⁶ *Comments of the Archdiocese of Los Angeles Educational and Welfare Corporation* at 3.

CONCLUSION

The Comments filed by the Petitioners suffer from the same shortcomings as the original Petition. The Petitioners want to reinvent MDS and ITFS to create a new, flexible service which will compete with other services such as LMDS and provide the broadest possible array of services, yet they do not want to pay for the flexibility right. WebCel, a strong supporter of spectrum flexibility, asks only that the Commission maintain a level playing field for all competitors rather than selectively identifying some services for competitive advantage by granting free spectrum rights.

Respectfully submitted,

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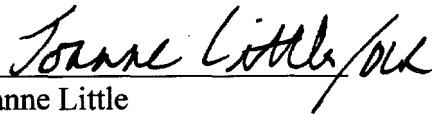
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Dated: May 29, 1997

CERTIFICATE OF SERVICE

This is to certify that on this 29th day of May, 1997, a copy of the foregoing Reply Comments of WebCel Communications, Inc. was served, by first class mail on the following persons:


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